

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRI. WRIT PETITION NO. 184 OF 2016

Vijay s/o Gopalrao Bhole

-vs-

Smt.Kalyani W/o Vijay Bhole and one other

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.A.B.Moon, counsel for the petitioner.
Ms Anita Gupta, counsel for the respondents.

CORAM : SMT.REVATI MOHITE DERE, J.

DATE : 09.11.2017.

Heard learned counsel for the parties.

By this petition, the petitioner has impugned the order dated 19/01/2016 passed by the learned Principal Judge, Family Court, Nagpur below Exhibit-6 (Interim Application No.712 of 2014) in Petition No.E/462 of 2014.

Learned counsel for the petitioner submits that although the petitioner is running a gym, the income therefrom is not more than Rs.18,000/- per month. He submits, that the learned Principal Judge, Family Court, Nagpur had erred in not considering the fact, that no documents were produced by the respondent-wife to show that the petitioner-husband was earning around Rs.2,00,000/- per month. He submits, that the learned Principal Judge, had erred in not considering the Income Tax Returns filed by the petitioner. He submits, that the petitioner is ready to pay a sum of Rs.5,000/- per month to both the respondents till Petition No.E/462 of 2014 is finally decided by the Family Court.

Learned counsel for the respondents opposed the petition. She submitted, that the respondent No.1 is the second wife of the petitioner. According to the learned counsel for the respondents, due to the ill-treatment and cruelty meted out by the petitioner, the respondent No.1 was constrained to leave her matrimonial home. Learned counsel further submits, that the petitioner and the respondent No.1 have a child, who is aged 12 years. According to the learned counsel, the petitioner-husband is the owner of residential Plot Nos.6 and 7, having multistoried building thereon. She submits, that there are three floors in one building i.e. first floor having four rooms; second floor having four rooms and the third floor having three rooms. She submits, that on the first floor of the said building on Plot No.6, the petitioner is residing with his parents and the remaining two floors are given on rent. According to the learned counsel for the respondents, from the rent of the said floors i.e. second and third floors, the petitioner is drawing a rental income of about Rs.27,000/-. She submits, that there is another Plot No.7 adjoining the said residence i.e. Plot No.6, on which there is a building (four floors). She submits, that the petitioner is running a gym by the name 'Mahabaly Gym' in the said building and earning an income of Rs.1,50,000/- per month. According to the learned counsel for the respondents, more than 100 persons can be accommodated in one batch in the said gym. She further submits, that in addition to the above, the petitioner is also earning an income from selling protein powder for fitness. She further submits, that in fact, in the meantime, the rental income of the flat where the respondents are residing has gone up from Rs.3,000/- to

Rs.5,000/- per month, which the petitioner is required to pay to the landlord directly, pursuant to the order dated 19/01/2016. She submits that no interference is warranted in the impugned order and seeks for dismissal of this petition.

Perused the papers including the impugned order. Admittedly, the marriage between the petitioner and the respondent No.1 was solemnized on 29/12/2006 and from the said wedlock, a son Malhar-respondent No.2 was born on 24/10/2007. It is alleged by the respondent No.2, that due to the ill-treatment meted out by the petitioner, she had to leave her matrimonial home. Pursuant thereto, the respondents filed a petition bearing Petition No.E/462 of 2014 alongwith an application seeking interim maintenance (Interim Application No.712 of 2014) in the Family Court and sought maintenance. Learned counsel for the petitioner states, that Plot No.7 was gifted by the petitioner's parents to him, whereas, Plot No.6 belongs to the petitioner's parents. The said fact is vehemently disputed by the learned counsel for the respondents. Admittedly, no document was produced by the petitioner before the Family Court to show the ownership of the said plots. It appears from the reply filed by the petitioner in the Family Court, that he is running a gym in Plot No.6, by the name of 'Mahabaly Gym'. The petitioner has denied receiving an income of Rs.1,50,000/- per month from the running of the said gym. The petitioner has not disputed, that there are some flats, but has denied that the said flats have been given on rent. As observed by the learned Principal Judge, that although the Income Tax Returns were filed by the petitioner, the same cannot be accepted as actual

income considering that it is a private gym, which is being run by the petitioner. The learned Principal Judge has rightly come to the conclusion, that the petitioner-husband could be earning a sum of Rs.25,000/- per month, keeping in mind the averments made in the application and the reply thereto. The son of the petitioner and the respondent No.1 is taking education in Narayana Vidyalayam and is presently in the 8th Standard. The respondents are living in the rented premises. No infirmity is seen in the impugned order awarding maintenance and granting other reliefs to the respondents.

In view of above, no interference is warranted in the impugned order dated 19/01/2016. Accordingly the writ petition is dismissed. There shall be no order as to costs.

JUDGE